## Appendix A

United States District Court
For the Northern District of California
Southern Division

No. 44413

Elisha Edwards,
Plaintiff,
vs.
Pacific Fruit Express Company,
a Utah Corporation,
Defendant.

### SUMMARY JUDGMENT FOR DEFENDANT

This case coming on to be heard before the Honorable Albert C. Wollenberg upon motion of defendant Pacific Fruit Express Company for summary judgment, the plaintiff, Elisha Edwards, being represented by Messrs. Werchick, Kiriakis & Sullivan, by Arne Werchick, Esq., and defendant, Pacific Fruit Express Company, being represented by Messrs. Corrigan & Roy, by Donald O. Roy, Esq., and the Court being fully advised, it is found that the defendant Pacific Fruit Express Company was not at the time of plaintiff's injury a common carrier by railroad subject to the Federal Employers' Liability Act, 45

U. S. C. Section 51 et seq. It is therefore found that the complaint fails to state a claim against defendant Pacific Fruit Express Company, upon which relief can be granted.

It Is Therefore Ordered And Adjudged that defendant Pacific Fruit Express Company is hereby granted judgment against plaintiff.

Dated: MAR 18 1966

Albert C. Wollenberg
Judge of the United States
District Court

## Appendix B

United States Court of Appeals
For the Ninth Circuit

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| Elisha Edwards,<br>Appellant,<br>vs.<br>Pacific Fruit Express Company,<br>Appellee. | No. 21,020 |

[May 10, 1967]

On Appeal from the United States District Court
for the Northern District of California

Before: Chambers, Hamley and Merrill,
Circuit Judges.

Per Curiam:

This is an appeal from a district court determination that Pacific Fruit Express Company (P.F.E.) is not a "common carrier by railroad." Appellant, an injured P.F.E. employee, claims that P.F.E. is such a common carrier. At stake is appellant's attempt to proceed under the Federal Employee's Liability Act, 45 U.S.C. 51, et seq.

P.F.E. is a large refrigerator car company. It owns approximately 25,000 refrigerator cars and carries about 28% of all refrigerated goods moving by rail.

P.F.E. deals directly with the shipper and, among other activities, maintains a service by which it keeps the shipper posted as to the whereabouts of its goods in transit, thus allowing the shipper to order goods diverted from one destination to another.

In asking this court to decide that P.F.E. is a "common carrier by railroad," appellant necessarily asks that we overrule the case of *Gaulden v. Southern Pac. Co.*, 78 F. Supp. 651 (N.D. Calif.), aff'd 174 F.2d 1022, which construed the term narrowly to exclude refrigerator car companies.* Were the slate clean, we might well be convinced by appellant's argument for a broader definition, but, as it is not, we choose to follow the unanimous line of authority and affirm. We note that since *Gaulden, supra,* was decided in 1949, Congress has not acted to bring refrigerator car company employees under F.E.L.A. protection.

*Gaulden, supra,* has been followed in *Hetman v. Fruit Growers Express Co.*, 3 Cir., 346 F.2d 947; *Moleton v. Union Pacific Co.*, 118 Ut. 107, 219 P.2d 1080, *cert. denied*, 340 U.S. 932; *Aguirre v. Southern Pac. Co.*, 232 Cal. App. 2d 636, 43 Cal. Rptr. 73.